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No. 85-707

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

CITY OF PHILADELPHIA,
Petitioner,

v.

BOROUGH OF GLASSBORO, et al.,
Respondents.

BRIEF OF GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petition for Writ of Certiorari
to the Supreme Court of New Jersey

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QUESTIONS PRESENTED FOR REVIEW

Whether or not a New Jersey Court Order that enjoins solid waste from outside New Jersey, counties of Camden, Salem and Gloucester, from being disposed of in a judicially created lift in an otherwise exhausted landfill on the grounds that the landfill was the only available interim disposal site available to those counties is violative of the Commerce Clause of the United States Constitution?

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COUNTER-STATEMENT OF CASE

Petitioner, City of Philadelphia, is seeking a stay of an interlocutory order of the Superior Court of New Jersey, Law Division, wherein the trial court, faced with an undisputed health and safety crisis arising out of the imminent closing of a sanitary landfill which had reached its permitted capacity, directed an orderly closure of the landfill, to wit, allowing certain New Jersey municipalities which had no alternatives and which were in counties that had entered interdistrict waste agreements with the host county to continue using the landfill for a limited period of time, conditioned upon agreeing to substantial remedial orders, while excluding other New Jersey counties as well as Pennsylvania users, both because other alternatives were available to them and because they had not entered interdistrict waste agreements with the host county.

In opposition to petitioner's application, respondent Gloucester County Board of Chosen Freeholders shows as follows:

1. Kinsley Landfill is located in Deptford Township, Gloucester County, New Jersey, and is owned and operated by Kinsley Landfill, Inc. In recent years, Kinsley has been utilized for the disposal of solid waste generated in a number of municipalities within New Jersey and also in Pennsylvania and Delaware. The Gloucester County Board of Chosen Freeholders and the New Jersey Department of Environmental Protection are regulators of Kinsley Landfill pursuant to the New Jersey Solid Waste Management Act, *N.J.S.A.* 13:1E-1 *et seq.* They are charged with the responsibility of having a coordinated countywide and statewide scheme for the collection and disposal of solid waste and for weighing the public risks and benefits with regard to the siting of landfills and with regard to landfill capacity. (Ra A-4)

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*Ra Respondents appendix

2. During the early part of 1984, it became apparent that the maximum capacity authorized for Kinsley pursuant to a permit issued by the New Jersey Department of Environmental Protection would be reached before the end of 1984 rather than the original projected date of 1988. (Pa 132A) Waste in excess of the permitted amount could not be legally accepted unless first authorized by Gloucester County pursuant to an amendment to the County Solid Waste Plan and then subsequently approved by the New Jersey Department of Environmental Protection. (Ra A-4) During the summer of 1984, Gloucester County held hearings to determine if additional capacity should be authorized for Kinsley and considered substantial testimony with regard to the various issues inherent in such a determination. On September 28, 1984, Gloucester County determined that the public interest would best be served by adhering to and not deviating from the original capacity authorized for Kinsley and thereby rejected an application for a plan amendment for landfill expansion at Kinsley. (Ra A-5) On October 11, 1984, Kinsley gave notice that, based upon anticipated volume in the next few weeks, the approved capacity would be reached during the week of October 28, 1984, and therefore all users should make plans for switching to another facility. (Ra A-5)

3. On October 18, 1984, the Borough of Glassboro filed suit against the Gloucester County Board of Chosen Freeholders; the New Jersey Department of Environmental Protection and its commissioner; Kinsley Landfill, Inc.; the City of Philadelphia and the County of Camden, seeking to enjoin both the closure of the landfill and the use of the landfill for disposal of waste generated in the County of Camden and the City of Philadelphia. Thereafter, various parties intervened as plaintiffs, including numerous New Jersey municipalities which utilized the Kinsley landfill for disposal of

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*Pa Petitioners appendix

waste generated within their communities. Deptford Township, the situs of the Kinsley Landfill, intervened as a defendant and joined the New Jersey Department of Environmental Protection and Gloucester County in arguing that the trial court should not authorize the landfill to operate in excess of permitted levels. Defendant Philadelphia did not oppose the closing of the landfill, but it argued that if the landfill remained open, Philadelphia should be one of the parties authorized to continue utilizing the facility. (Pa 112A)

4. The trial court first held a hearing on October 19, 1984, and then heard testimony on October 23, October 24, October 25, and October 26, 1984. On October 26, 1984, the Court entered a temporary restraining Order directing , among other things, that Kinsley and the New Jersey Department of Environmental Protection report to the Court on November 9th, 1984 on the environmental feasibility of a vertical expansion of Kinsley for one additional lift of compacted solid waste, and that the New Jersey Department of Environmental Protection file with the Court a plan for the orderly closure of the landfill. All parties were directed to return before the court on November 13, 1984. During the interim all parties were permitted to continue to utilize the facility. (Ra A-12)

5. On November 13, 1984, the trial court made factual findings and entered a preliminary injunction, including the following:

> a. Kinsley Landfill was directed to implement a vertical expansion of one additional lift (16 feet) of compacted solid waste in accordance with the design approved by the New Jersey Department of Environmental Protection; (Pa 90A)
>
> b. This additional capacity, which at best would last for one year, was to be restricted for use by Gloucester County and those other districts which

had entered into interdistrict waste agreements with Gloucester County, to wit, Camden and Salem Counties; (Pa 89A)

c. Camden, Gloucester and Salem Counties were placed under the court order to proceed immediately with the siting of landfills which were to be operational within 12 months of the November 13, 1984 court order; (Pa 89A)

d. As of November 27, 1984, except for waste generated in Camden, Gloucester and Salem Counties, all solid waste therefore disposed of at Kinsley which had been generated in other New Jersey counties and municipalities as well as in Pennsylvania and Delaware communities and which was not subject to interdistrict waste agreements with Gloucester County, would no longer be accepted at Kinsley; (Pa 89A)

e. All municipalities within the borders of Camden, Gloucester and Salem Counties were placed under court order to maximize their recycling efforts so as to reduce the amount of waste being disposed of during the interim period and to report periodically to the court and New Jersey Department of Environmental Protection. (Pa 89A)

6. On November 15, 1984, Philadelphia moved before the trial court seeking reconsideration of the November 13, 1984, order so as to allow Kinsley Landfill to continue accepting waste generated within the City. The City also asked the court to authorize a second vertical expansion of the landfill. After hearing testimony from experts from both the City and the New Jersey Department of Environmental Protection and considering the potential impacts, the trial court denied the application for a second lift and affirmed its prior Order of November

13, 1984. (Pa 112A) On November 21, 1984, Philadelphia again returned to the trial court and sought reconsideration regarding the application for a second lift. Additional affidavits were considered by the trial court, which subsequently found no basis to change the original factual findings upon which it had rejected the application for a second lift.

7. On November 26, 1984, the Appellate Division of the Superior Court of New Jersey denied Philadelphia's motion for leave to appeal and for a stay of the trial court order. (Pa 49A)

8. On November 27, 1984, Justice Alan B. Handler of the Supreme Court of New Jersey, sitting as a single justice, granted the City's motion for a stay pending consideration of the matter by the full New Jersey Supreme Court. Between November 27, 1984 and December 7, 1984, Philadelphia and two other haulers who had joined in the City's stay application continued to utilize the landfill. As a result, less than eleven months' capacity is left at Kinsley Landfill for Camden, Gloucester and Salem Counties before their new landfills must be sited, approved and become operational.

9. On December 7, 1984, the New Jersey Supreme Court vacated the interim stay granted by Justice Handler sitting as a single justice and denied the motion for a stay of the order of the trail court of November 13, 1984. However, the New Jersey Supreme Court granted Philadelphia's motion for leave to appeal and summarily remanded the appeal be accelerated. In accordance with the November 13, 1984, trial court order authorizing the parties to seek modification or dissolution of that order on short notice, the New Jersey Supreme Court directed the Appellate Division to continue limited jurisdiction in the trial court subject to appellate supervision. (Pa 51A)

The trial Court's preliminary injunction was affirmed unanimously by the New Jersey Superior Court, Appellate Division on February 15, 1983. (Pa 49A)

On July 10, 1985, the New Jersey Supreme Court also, in a unanimous opinion, affirmed the decision of the New Jersey Superior Court, Appellate Division. (Pa 1A)

ARGUMENT

I. Review by the Supreme Court of the United States is currently premature.

A. The Petitioners should be denied a writ of certiorari because there has been no final judgment by the State Court.

The Supreme Court of the United States only has jurisdiction to entertain appeals from State Court determinations which are Final Judgments. 28 USC 1257; *L. Costarelli v. Massachusetts,* 421 US 193, 195, n. 3 (1975). Specifically, the federal issue in a particular case must have been finally resolved by the highest Court of a State before the Court can intervene. *Chapman v. California,* 405 US 1020, (1972); *Gospel Army v. Los Angeles,* 331, US 543 (1947).

In the instant case, the federal issues are still very much alive at the trial level. Specifically, it is alleged that the Freeholders, when they denied Kinsley its' expansion, did so because of a desire to discriminate against interstate commerce. If such an allegation is found to be true, the trial court is authorized to exercise its' equitable discretion to fashion a remedy. Such a remedy could include re-opening the landfill to interstate commerce. Until this issue is resolved at the trial level, review by the Court would be both duplicative and premature.

Petitioners argue that the federal issue before the Court surrounds the trial court's order for preliminary injunction. The Order itself is open to modification until the trial court divests itself of jurisdiction. This will occur when a final judgment is reached. The paragraph 10 of

the Oct. 26, 1984 Order expressly provides for it's dissolution or modification on application made on one (1) day's notice (Pa 129A). Thus the Petitioners may seek relief from the trial court at anytime should they believe current facts warrant such relief.

The Court could treat the federal issue as final, not withstanding the pending state proceedings. *Local No. 438 Construction and General Laborer's Union v. Curry,* 371 US 542 (1963); *Nebraska Press Assoc. v. Stuart,* 423 US 1327 (1975); and *National Socialist Party v. Skokie,* 432, US 43 (1977). Yet in those cases, the Court was acting to protect an infringement on personal fundamental rights. In those cases the Court has placed a heavy presumption against any infringement to First Amendment Freedoms. *Local No. 438; National Socialist Party;* and *Nebraska Press Association.* Those fundamental freedoms are not at issue in the instant case.

The Court has adopted a much different standard when reviewing state actions under the commerce clause. In commerce clause cases the initial burden to demonstrate discrimination rests with the party attacking the state regulation. *Hughes v. Oklahoma,* 441 US 332 (1979). The presumption instead favors the regulation, a standard opposite that applied in the First Amendment cases. The Petitioners have failed, at any time to establish an irreversible or immediate harm to themselves constitutional or otherwise. The Courts of New Jersey have so held as findings of fact. Speedy review is not required to safeguard the rights of the Petitioners.

The Court would do well to wait until all the issues are fully developed by the trial court and reviewed by the highest New Jersey Courts before accepting a petition for certiorari.

B. The Petitioners lack standing to seek review by the Court because there has been no injury in fact.

The Petitioners argue that their denial of access to Kinsley is impermissable. This analysis ignores the realities of the situation. The landfill was exhausted. There was no capacity at the landfill for anyone until the Trial Court created the additional space.

Kinsley had no legal right to continue. It is not the closure which the Petitioners seek to attack but instead access to the judicially created lift. But for the trial courts actions there would be no one using the landfill. The petitioners, however, are not denied access to *any other* private landfill in the State of New Jersey. In order to have standing in the instant case the Petitioners must prove that they are foreclosed due to state action from any other private site in New Jersey, and also that the exclusion works a real injury to the petitioners. This two prong test has not been met by the petitioners.

The evidence is clear. The petitioner has access to many other sites in New Jersey. There is no state action which bars Philadelphia from contracting with any other private landfill in the State of New Jersey. The first prong of the test can not be met by the petitioners.

The petitioners as well, can not satisfy the second prong of the test, as there is no real injury to the petitioner. As the New Jersey Supreme Court noted in its' opinion:

> "Philadelphia's last access to an exhausted landfill must be contrasted with the disastrous results that its' continued use would visit on the tri-county municipalities. With respect to the economic impact of the closure, the Appellate Division observed than Philadelphia, a city of approximately 1.7 million people with a solid waste disposal budget of approximately $4,000,000.00 would suffer much less than the fifty-nine (59)

municipalities in the tri-county area. 199 *NJ Super* at 100. The estimated increase in Philadelphia's budget for solid waste disposal is 5% for the first year following Kinsley's closure and 2% thereafter. *Id.* By contrast, the solid waste disposal budget of Glassboro, a municipality of some 14,500 people, could escalate from $100,000.00 to $1,000,000.00 per year ***, * and the cost to Camden County, with a population of approximately 500,000 people, could increase from $3,000,000.00 to $12,000,000.00 annually. *Id.*

The closure of Kinsley, however, involves more than cost considerations. It would force the tri-county municipalities to embark on a crash garbage disposal program, one that would include, for example, siting and establishing transfer stations to store garbage temporarily, pending delivery to a permanent site. Such a program, as formidable and costly as it would be, would become obsolete in one (1) year, when the new dump sites become operative. Furthermore, as the Appellate Division stated:

'Some towns, such as Clayton, Elmer, and Woodstown, had no alternatives to their present private-hauler service if Kinsley were closed without access to an alternate local source. The private haulers would simply close down.' *Id.* Thus practical considerations demonstrated that the task confronting the tri-county municipalities would be not merely difficult, but virtually impossible to perform. Such considerations confirm that the burden on Philadelphia is not excessive." *Glassboro at 151, 152* . . . Moreover, Philadelphia has alternative sites to dispose of it's garbage, albeit ones that impose increased

> costs on the City. In contrast, the tri-county municipalities do not have access to alternative sites, to trucks, or to what may be of greater importance, to transfer stations. *"Glassboro v. Board of Chosen Freeholders of Gloucester County, 100 NJ 134, at 153, (1985).*

As the petitioners have noted in their belief, simple economic protection is not enough to legitimate state action. However, the reverse is also true, simply because the City must pay more for it's solid waste disposal does not justify overturning a legitimate state action. Aside from the incidental increase in costs, Philadelphia can not demonstrate any burden to interstate commerce. There is no state erected barriers which prohibits the petitioners from sending their trash elsewhere in New Jersey. The petition for writ of certiorari should be denied because the petitioner lacks standing to bring the appeal to the Court since there was no injury to interstate commerce.

II. The Order for preliminary injunction is not a violation of the Commerce Clause.

The court has established a tripartite analysis in dormant commerce clause cases. The first test is to see if the state action is discriminatory on it's face. *Philadelphia v. New Jersey, 437 US 617 (1978).* The second test is to see if there is a discriminatory purpose or effect of an otherwise neutral state action. *Hunt v. Washington State Apple Advertising Commission, 432 US 333 (1977).* The final test and the modern approach is the balancing test articulated in *Pike v. Bruce Church, Inc., 397, US 137 (1970).*

A) The order of preliminary injunction is not discriminatory on it's face.

The petitioners argue that the order discriminates against all interstate commerce. The Court in *Phila. v. NJ 437 US 617 (1978)*, gave the test to be applied as follows:

> "[A] state may not accord it's own inhabitants a preferred right of access over consumers in other states to natural resources located within it's borders." [citations omitted] *Id at 627.*

> "But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently." *Id at 626.*

It is clear from the face of the Order that the origin of the trash was not the deciding factor in its exclusion. "The mere fact that Philadelphia is in another state should not imbue it with greater rights than it would possess if it were located in New Jersey. The commerce clause was intended as a shield against discrimination, not as a sword, to obtain a preference." *Glassboro at 147* "Additional garbage from any source, either within or outside New Jersey, will displace space at Kinsley needed to avert a health crisis in the three counties." *Id at 147.*

The New Jersey Supreme Court concluded by holding that "the injunction is not discriminatory in purpose or effect. It is plainly not a mere protection and measure and, therefore, does not constitute a *per se* violation of the commerce clause. [citations omitted]" *Id at 147.*

The petitioners rely on *Philadelphia v. New Jersey, Supra*, as controlling in the instant case. This reliance is misguided. The Court in *Philadelphia v. New Jersey* was reviewing a statute passed by the legislature which closed completely New Jersey's sanitary landfills to out of

state trash. In the instant case, the Court is reviewing an Order of preliminary injunction which created extra capacity at an otherwise closed landfill. Incident to that Order, out of state waste producers were prohibited from using that single site. The borders of New Jersey are still open and other private sites are still available for Philadelphia's use.

The Court itself, in *Philadelphia v. New Jersey*, specifically excluded it's opinion from applying to state-owned resources. As Justice Brennan, writing for the majority, noted in footnote number 6:

> "We express no opinion about New Jersey's power, consistent with the commerce clause, to restrict to state residents access to state-owned resources. . ." *Id at 627.*

As in *Sporhase v. Nebraska, 458 US 941 (1982)*, the ownership of the resource does not have to be absolute. Justice Stevens, writing for the majority, held that the State's claim to public ownership, although not absolute, could "support a limited preference for it's own citizens in the utilization of the resource." *Id at 956.* In the instant case, Kinsley may not be publicly owned but it is a public utility, *NJSA 48:2-13; NJSA 48:13A-1 to 1 E.* and must operate in the public interest, *NJSA 48:13A-1. Glassboro at 150.* Finally, Kinsley is not currently operating as a private landfill but on "an emergent basis pursuant to a Court Order and Department of Environmental Protection approval". *Judge DeSimone, Stenographic transcript of Decision of the Superior Court of New Jersey, Law Division, Gloucester County, dated November 19, 1984. (p.126A).* Just as the ground water at issue in *Sporhase*, the sixteen foot (16') lift created by the trial court is for the purposes of the commerce clause, a state-owned resource. The trial court's allocation of this sparse capacity is not controlled by *Philadelphia v. New Jersey, Supra,* but by *Sporhase v. Nebraska, Supra.*

The Court noted in *Philadelphia v. New Jersey*, that New Jersey could legitimately slow the flow of all waste into the states landfills, even though interstate commerce may incidentally be affected. *Id. at 626*. This was exactly what the Court sought to do by allowing only the tri-counties to use the judicially created capacity. Moreover, as the Court held in *Sporhase v. Nebraska*, 458 US 941 (1982)

> "[In] the absence of a contrary view expressed by Congress, we are reluctant to condemn as unreasonable measures taken by a State to conserve and preserve for it's own citizens this vital resource in times of severe shortage." *Id at 956*.

> "[A] State's power to regulate the use of water in times and places of shortage for the purpose of protecting the health of it's citizens — and not simply the health of it's economy — is at the core of it's police power." *Id at 956*.

In the instant case the crisis facing the three (3) counties was immediate and significant. Without the use of the sixteen foot (16') lift, the three counties, as the lower Courts have held, would have faced trash piling up in their streets. The crisis was limited geographically to only three (3) of New Jersey's twenty-one (21) counties. The Order was tailored to the specific needs of the area. No trash from outside the three (3) counties was to be allowed into the lift. The Petitioners argue that the November 29th, 1984 Order opened the lift to intrastate commerce but closed the landfill to interstate commerce. This argument lacks any merit. The Order of November 29th, 1984, only allowed for one (1) sewerage authority outside the three (3) counties to use the lift, Rockaway Valley Regional Sewerage Authority. The other four (4)

sewage treatment facilities are all located in the three (3) counties. The Petitioners completely ignore Paragraph #6 of the November 13th, 1984, Order which states:

> "6) Disposal of sewage sludge at Kinsley Landfill shall cease on March 15th, 1985." (Pa 121A)

As of March 15, 1985 no sewage sludge has been deposited in the lift. The issue of the November 13 Order opening the lift has become moot.

The Order of preliminary injunction, as embodied by the October 26th, November 13th, and November 29th, 1984 Orders, is finely tuned to meet the crisis at hand. Only upon a showing of extraordinary need has the Court allowed access to the lift. Philadelphia, has on many occasions, petitioned the trial court for access to the lift. However, it has never *proven* that access to the lift was necessary to avert a crisis of any kind.

To suggest that intrastate commerce remains unaffected by the Order is to mistake the facts. *No solid waste* which originates outside the three (3) counties may be deposited in the lift. It is irrelevant whether the trash originates in Trenton or in Philadelphia, both are excluded. Prior to Kinsley's closure, anyone was free to contract with the landfill to deposit their solid waste. Today only those communities which can prove they have no alternate sites are granted access. The situs of the community is irrelevant in this determination. The New Jersey Courts' characterization of the Order as an even-handed regulation must be upheld and the petition for certiorari denied.

B) The trial Court's purpose in creating the Order was to avert an immediate crisis, not to discriminate against interstate commerce.

The petitioner's argue that the Order for preliminary injunction was enacted with a desire to discriminate

against interstate commerce. The record before the Court does not support that conclusion. In the Trial Court's decision of October 26, 1984, which the petitioner omitted from their appendix, Judge DeSimone quite clearly states the criteria he used in making the decision.

> "In making this determination this court must be satisfied that several criteria are met; one, that plaintiffs have no adequate remedy at law; two, an immediate and irreparable harm will result without the restraint requested; three, that there is the reasonable probability of eventual success on the merits of plaintiffs' claim; and four, the balancing of the equities involved resulting in the determination that the harm to the plaintiffs outweighs the harm that may result to the defendants if the injunction is granted to the plaintiff or is denied as the case may be." (Ra A-2)

In applying this criteria, the trial court concluded:

> "The court is satisfied today in a temporary nature that the plaintiffs have properly invoked its equitable jurisdiction, there being no adequate remedy at law; the reasonable likelihood that the plaintiffs are entitled to relief has been met by them for the purpose of this hearing. The court recognizes that if Kinsley were permitted to close this Sunday there would be in actuality no county plan for solid waste disposal in this district. All the possible alternatives, which may be suggested or modifications of the County Solid Waste Plan and under the act would be required to undergo certain procedures before their acceptance and subsequent submission for approval by the DEP. This court is not going to wait until the 11th hour. The imminent crisis is

> upon us today and before this Court and it appears to be taking place in many districts all through this state due to the all-decreasing landfill areas and the ever- increasing public concerns of the environment." *Stenographic Transcript of Oral Decision of the Superior Court of New Jersey, Law Division, Gloucester County, Dated October 26, 1984.* (Ra A-7)

The facts are clear, the purpose of the Order was to avert a major crisis in the Delaware Valley. Unlike in *Philadelphia v. New Jersey, Supra*, the Order was designed to deal with an actual crisis in a single locale. Kinsley landfill only had a few weeks of capacity remaining. When that capacity was exhausted, the three (3) counties, Gloucester, Camden and Salem, would have *no where* to send their waste. (Pa 34A) Philadelphia, however, could easily divert it's waste to alternate sites. (Pa 45A) The borders of New Jersey were not closed by the Order, only access to a judicially ordered lift in an otherwise closed landfill facility. The trial judge was faced with the Solomonesque task of dividing the minimal space which the lift created. Philadelphia had the means to divert its waste and also singly accounted for over 50% of the waste disposed of at the site. (Pa 9A) While the communities in the three (3) counties had no way to divert its waste. Given these realities, the Court bought the three counties enough time to get alternate sites on line. Before the year is out the crisis will have passed as the new facilities come on line. The wisdom of Judge DeSimone's bold stroke is today clear to the naked eye.

But for an accident of geography, Philadelphia is not in New Jersey. That accident of geography does not imbue Philadelphia with any rights greater than those of the citizens of New Jersey. The Delaware Valley faced a

shared crisis in solid waste disposal. The Order attempted to resolve the health problems of not just New Jersey, but the region as a whole. It was not adopted with an eye to discriminate against commerce.

C. The Order for preliminary injunction is an evenhanded balanced approach to a crisis in the disposal of solid waste.

As was noted earlier in the facts support, a conclusion that the Order for preliminary injunction was an evenhanded measure. The final hurdle that must be overcome is the balancing test articulated in *Pike v. Bruce Church, Inc., 397, U.S. 137, 142 (1970):*

> "Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. *Accord, Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 471 (1981); Hughes v. Oklahoma, supra, At 336; Philadelphia v. New Jersey, Supra, at 624.*

The remaining issues are:

1. Is there a legitimate local interest involved?

2. Is there a less drastic alternative?

3. Is the impact on interstate commerce excessive in relation to the local problem?

Is there a legitimate local interest involved? Congress, when it adopted Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et sec., noted that the disposal of solid waste and human health were inextricably intertwined.

> ". . . disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment." 42 USC §6901 (b2)

In acknowledging the dangers to the environment concurrent with solid waste disposal, Congress expressly authorized the States to take the primary role in regulating solid waste disposal.

> ". . . [T]he collection and disposal of solid wastes should continue to be primarily the function of state, regional and local agencies . . ." 42 USC §6901 (A4).

As a finding of fact, Congress has stated that the regulation of solid waste is a legitimate local interest.

The New Jersey Courts have been unanimous in holding that the trial judge was acting to solve an actual public health emergency.

> "One would be hard pressed to discover a more legitimate state interest than that of protecting the health of the citizenry, . . . , in the preservation of diminishing sources of waste disposal." [citations omitted] *Glassboro* at 147.

> "We find the injunction to be a measured response to a genuine local health problem". *Id.* at 149.

In light of both congressional and judicial recognition of the legitimacy of the local need, the next issue is,

were there any less drastic alternatives available? In resolving this issue, the New Jersey Supreme Court stated:

> "The final inquiry in evaluating a state conservation program under *Pike* is whether the local interest can be achieved as well with a lesser impact on interstate commerce. *Pike v. Bruce Church, Inc., supra,* 397 *U.S.*, at 142, 25 *L.Ed.* 2d at 78. Put differently, the question is whether a less discriminatory injunction might adequately protect the health of the citizens of southern New Jersey. *See Hughes v. Oklahoma, supra,* 441 *U.S.* at 336, 60 *L.Ed.* 2d at 162."

In this regard, Philadelphia argues that all former users should be allowed continued access at proportionately reduced levels. At first glance, that argument appears to be fair. On closer examination, however, it becomes apparent that what is superficially fair is, in reality, a request for a preference. As stated previously, were it not for the emergent need of the three counties, Kinsley would be closed to all users. Use of Kinsley has been restricted for a limited time to avert a public health crisis in southern New Jersey. Moreover, Philadelphia has alternative sites to dispose of its garbage, albeit ones that impose increased costs on the City. In contrast, the tri-county municipalities do not have access to alternative sites, to trucks, or to what may be of greater importance, to transfer stations.

The threat to local health, which the trial court described as raising a "horrendous specter: could not be averted by a less-restrictive injunction. *See Sporhase v. Nebraska, supra, 432, U.S. at 957, 73 L.Ed. 2d at 1267; Hughes v. Oklahoma, supra, 441 U.S. at 336, 60 L.Ed. 2d*

at 261-62; Hunt v. Washington Apple Advertising Comm'n, supra, 432 U.S. at 353, 53 L.Ed., 2d at 400.

Based on the record before us, a plan that accorded to Philadelphia access, even if proportionately reduced, would foreshorten the life of the landfill. Such a plan would not merely be a less effective means of obtaining time for the development of alternative sites; it would be ineffective. *See Minnesota v. Clover Leaf Creamery Co., supra, 459 U.S. at 464, 473-74,* . So viewed, Philadelphia's demand that the tri-county municipalities incur substantial costs for a short-term solution is not so much a request for a less discriminatory alternative as it is an attempt to place an excessive burden on those municipalities. *Sporhase v. Nebraska, supra, 458 U.S. at 956,* . That the injunction operates evenhandedly is apparent from the burden it places on the three (3) counties to develop premanent alternatives." Id. at 152-153.

Philadelphia did suggest alternatives, but those alternatives were not feasible. The first suggestion of allowing Philadelphia, as well as New Jersey communities to utilize Kinsley Landfill at reduced levels, was completely unworkable. The problem which was being addressed by the trial court was how to buy some extra time for the tri counties to get alternate disposal sites on line. To allow Philadelphia to utilize the lift would be to leave the solution stillborn. Philadelphia accounted for over fifty per cent (50%) of the trash disposed of at the site. Even at reduced levels, the non tri county trash would quickly exhaust the remaining capacity, before the tri counties could get their alternate sites ready. This basic fact has been undisputed by the Petitioners throughout the proceedings. Without the judicially created lift, the tri-counties had no where to dispose of their trash. The

non-tri county waste producers did have alternate sites available. Given the very limited space the lift contained, non tri-county trash had to be excluded, there was no less drastic alternatives.

Petitioners quickly analyzed the above and suggested that a second lift be created. The idea that with double the capacity, there would be room for outside waste, was an unworkable alternative. The trial court held that a second lift would endanger the health and welfare of the citizens of Deptford Township. The experts from the New Jersey Department of Environmental Protection concurred that one (1) lift was all that would be safe. It was for these safety concerns that the trial court declined to approve a second lift. (Pa 194A) There were no other alternatives available to the trial court.

The Petitioners request for an across-the-board proportional allocation of the available capacity at Kinsley Landfill is just another way of phrasing the first alternative. As was stated earlier, the goal was to buy time for those entities which had no alternate disposal site to get such on line. It was not adopted as a permanent solution but an interim one.

The lower courts have been *unanimous*. There was no less drastic alternative available to the trial court to solve the crisis.

The Order clearly satisfies the first three requirements of the *Pike* test. The Order was an evenhanded approach to a legitimate local concern where there were no less drastic alternatives available. The final issue to be resolved is whether the impact on interstate commerce is outweighed by the emergent needs of the Delaware Valley.

Any interference with interstate commerce is outweighed by the emergent needs of the Delaware Valley. "New Jersey is in the throes of a solid waste crisis." *Glassboro at 141*. "As the trial court found, garbage would accumulate in the streets of Salem, Gloucester and

Camden counties if those municipalities could not use the additional sixteen foot (16') lift." *Id at 149*. The prospect of trash piling in the streets must be balanced against the minimal increase in costs to Philadelphia to dispose of its' waste. As the Petitioners have noted, a mere increase in cost is not enough of a harm to justify an infringement on another's right. However, an actual threat to the health and welfare of thousands of people in Salem, Gloucester and Camden counties is a sufficient reason to justify the limited minimal burden on interstate commerce imposed by the trial court's Order.

III. The judicially created lift is not a private enterprise, but a state-created facility.

> ". . . I want to emphasize to all of you gentlemen, ladies and gentlemen in these proceedings, Kinsley Landfill is no longer operating as a landfill, as a private landfill; it is operating on an emergent basis pursuant to a Court Order and Department of Environmental Protection approval of the minimal of a one (1) lift expansion." *Judge DeSimone, Stenographic Transcript of Decision of the Superior Court of New Jersey, Law Division, Gloucester County, dated November 19, 1984. (p. 126A).*

The Petitioners, in arguing the instant case, relied heavily on the Court's opinion in *Philadelphia v. New Jersey, supra. Philadelphia v. New Jersey,* was never meant to apply to this situation. As Justice Brennan, writing for the majority noted in footnote number 6:

> "We express no opinion about New Jersey's power, consistent with the commerce clause, to restrict to state residents access to state-owned resources . . ." *Id at 627.*

The instant case is not the situation where, as Petitioners argue, Kinsley has continued operating pursuant

to a state license. Instead, it is operating under strict judicial scrutiny. The Court could have selected any site to place its' temporary landfill. It chose the site to be Kinsley. The fact that the site is on privately owned land, rather than public lands, is irrelevant, to Commerce Clause analysis, since without the judicial intervention there would be no useful life at the site whatsoever.

The Petitioners argue that the lift is a private enterprise. They analogize the lift to the hydroelectric plant in *New England Power Co. v. New Hampshire,* 455 US 331, (1982). As with *Philadelphia v. New Jersey, New England Power* is not applicable. *New England Power* dealt with a New Hampshire statute which provided:

> "No corporation engaged in the generation of electrical energy by water power shall engage in the business of transmitting or conveying the same beyond the confines of the State, unless it shall first file notice of its' intention so to do with the Public Utilities Commission and obtain an Order of said Commission permitting it to engage in such business". *Id at 335.*

The scope alone of the statute is far greater than the Order in the instant case. The New Hampshire statute attempts to regulate all the hydroelectric power exported from the State. The purpose of the statute was to gain an economic advantage for the citizens of New Hampshire at the expense of its' neighbors. This was clearly a case of "simple economic protectionism." *New England Power Co., Supra, Philadelphia v. New Jersey, 437 US at 624.*

In contrast, the instant case is a judicial Order creating additional limited space at an otherwise closed landfill. The purpose of that Order was to avert an undisputed crisis in the disposal of the area's solid waste. Just as the ground water in *Sporhase,* the judicially created lift was imbued with the "indicia of a good publicly produced and owned in which a state may favor it's own

citizens in times of shortage." *Id at 957*. It is not simply the fact that Kinsley Landfill is a public utility subject to state regulation, but also the fact that the trial court created the additional capacity which makes the lift a state enterprise. It was not Kinsley acting as a private enterprise which is operating today, but merely an extension of the trial court.

CONCLUSION

The Founding Fathers provided the Commerce Clause as a safeguard of trade among the States. It was an effort to give each State equal access to all the markets within the country. However, it was not envisioned as a sword to threaten the health and safety of any States' citizenry. The health and welfare of a States' citizens were to be protected by the police power reserved to each State.

The remedies created by Judge DeSimone were not an effort to protect the economy of New Jersey. It was a rational attempt to provide for an interim solution to a pressing crisis in the Delaware Valley. Without his bold stroke, a catastrophic crisis would have been the result. The Founding Fathers believed such was at the core of a State's police power.

For the foregoing reasons, the petition for a writ of certiorari in this case should be denied.

Respectfully submitted by
Bruce C. Hasbrouck
Counsel of Record

Attorney for Respondent
Gloucester County Board
of Chosen Freeholders

Lewis G. Adler
of Counsel

Dated November 11, 1985

APPENDIX

Stenographic Transcripts of Decision of the Superior Court of New Jersey, Law Division, Gloucester County Dated October 26, 1984 ... A-1

Temporary Restraining Order of the Superior Court of New Jersey, Law Division, Gloucester County Dated October 26, 1984 ..... A-12

SUPERIOR COURT OF NEW JERSEY
GLOUCESTER COUNTY — LAW DIVISION
DOCKET NO. L-070476-84 PW

BOROUGH OF GLASSBORO, a municipal corporation of the State of New Jersey, et al., *Plaintiffs,*	)	
vs.	)	STENOGRAPHIC TRANSCRIPT
GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION and ROBERT E. HUGHEY, Commissioner of the New Jersey Department of Environmental Protection, KINSLEY LANDFILL, INC., THE CITY OF PHILADELPHIA and THE COUNTY OF CAMDEN, *Defendants.*	)	of Decision

PLACE: Gloucester County Courthouse
Woodbury, New Jersey

DATE: October 26, 1984

BEFORE:

HONORABLE SAMUEL G. DeSIMONE, AJSC

DOROTHY C. BOSS, CSR
Courthouse
Woodbury, New Jersey

THE COURT: Ladies and gentlemen, this is the decision in the matter of Kinsley Landfill case, which was tried before this court by way of an Order to Show Cause brought on before the court by way of emergent relief as we call it in the law, an Action in Lieu of Prerogative Writ.

The plaintiffs seek restraints against the New Jersey Department of Environmental Protection, Gloucester County Board of Chosen Freeholders, Deptford Township as an intervening defendant and Kinsley; and in counts nine and ten, restraints against the City of Philadelphia and Camden County. The verified complaints filed by the parties are on record and, therefore, this court need not repeat the various counts alleged against the defendants in this action.

This court on an emergent basis — and we have cleared our calendar this week to cover this situation — has heard testimony and has been presented with various documents admitted in evidence in an effort to establish the basis of the allegation set forth and whether temporary or interlocutory restraints should issue pursuant to court Rule 4:52-1.

In making this determination this court must be satisfied that several criteria are met; one, that plaintiffs have no adequate remedy at law; two, an immediate and irreparable harm will result without the restraint requested; three, that there is the reasonable probability of eventual success on the merits of plaintiffs' claim; and four, the balancing of the equities involved resulting in the determination that the harm to the plaintiffs outweighs the harm that may result to the defendants if the injunction is granted to the plaintiff or is denied as the case may be.

The purpose of a preliminary restraint or injunction is to allow the court to investigate, deliberate the merits of a case while maintaining the status quo. This was succinctly stated in *Peters vs. Public Service Corporation of New Jersey,* 132 New Jersey Equity Reports, 500 at page

511, a Chancery Division opinion, 1942. This was affirmed in 133 New Jersey Equity Reports, 283 by the then Court of Errors and Appeals, 1943. As further stated in the leading case of *Suenram vs. The Society of the Valley Hospital,* 155 New Jersey Superior Court Reports, 593 at page 596, which was a Law Division case published in 1977, that injunction is a drastic remedy, which is granted sparingly and when the issues presented are grave and difficult, it is to be administered by the court with sound discretion and upon the considerations of justice, equity and morality.

In the present case, the plaintiffs have invoked the inherent equitable jurisdiction of this court due to the immediacy of the situation at hand and the inability of the parties, according to the applicable law to eradicate themselves from their unfortunate predicament. A paralysis has occurred. This court must intervene for the public good. This court does not like to be in this position of, in effect, entering the area of legislation. However, the court will be here to protect the health, morals and citizens of the State of New Jersey.

This case, ladies and gentlemen, if I might describe it, is like a ship on alien seas with no pilot. At this juncture it is up to this court today to intervene and to get the ship in a wild sea on the proper course. Once that's done and everyone does their job, then this court can step back. My purpose today, and I want the record to be clear, is solely to intervene, to get this case on its proper track and to protect the health, welfare and citizens of the State of New Jersey and specifically, Deptford Township and the County of Gloucester. That is why this court is taking jurisdiction today. Someone must do it. The buck stops here, because the issues were presented here. They shouldn't be here. They are here and I will attempt to solve them temporarily until reason prevails and the proper authorities can then take over pursuant to law.

The case at bar presents a scenario that the legislature specifically attempted to invoke by the enactment of

the Solid Waste Management Act, New Jersey Statutes Annotated 13:1E and others, hereinafter called the Act. According to the legislature, the collection, disposal and utilization of solid waste was a matter of great concern to all citizens. Thus the act attempts to create a statewide management of solid waste disposal through the solid waste districts. Each district, in this case Gloucester County, is empowered to enact a solid waste management plan subject to certification and approval by the Commissioner of the Department of Environmental Protection. Subsequent modifications are likewise within the district's power subject to certain procedures, public hearing and likewise DEP approval.

In the case at bar, the Gloucester County Plan is modified as recently as 1982 was, according to its term, to be a ten-year plan for the uninterrupted disposal of solid waste. However, in actuality, the only landfill designated for dumping waste is the Kinsley Landfill, which will reach its designed capacity in a matter of days.

The plaintiffs seek relief before this court are governed by reason of the Act by their County Solid Waste Management Plan in the collection and disposal of solid waste. The county plan as certified is to be monitored by the Department of Environmental Protection to insure a coordinated statewide system for the disposal of waste. The DEP has taken no action with regard to the imminent closing of the only landfill in this district and the county, through its Board of Freeholders, has denied an application by Kinsley to expand. Therefore, this court is requested to step into this vacuum created by the Department of Environmental Protection and the County Board of Freeholders and attempt to protect the plaintiffs and the defendants and their residence, the industries affected, personnel and, of course, an overriding concern always before this court and, that is, the environmental situation; an awesome burden that's been thrust upon this court, one court, a trial court, to solve a dilemma which is facing the citizens of the State of New Jersey.

The uncontroverted evidence ladies and gentlemen, presented to this court and I so find and it reveals to me that the Gloucester County Waste Management Plan in its present state will not provide for the uninterrupted disposal of waste until 1988. Kinsley Landfill's permitted design capacity will be reached in a matter of days and if I recall from the maze of testimony that I heard, that's October the 28th, this Sunday. Mr. Burshtin, an engineer employed by the Department of Environmental Protection testified before this very court a few days ago as to the estimated time left in the Kinsley Landfill. The court having found this witness extremely credible for the purpose of this hearing and accepts his estimation that Kinsley will reach capacity not on October 23, but November — somewhere between November 10 and November 24. I further find that Gloucester County Board of Chosen Freeholders, the political arm responsible for the formulation of the County Solid Waste Management Program, which is responsible for the plan and implementation pursuant to the Solid Waste Act, New Jersey Department of Environmental Protection represented to this court by their testimony and evidence that they will close Kinsley when it reaches its designated or designed capacity, as I heard the term in these proceedings, a permitted capacity. An affidavit was submitted by Richard Feluso, a principal in the firm of Waring Engineering, which firm prepared the design, drawings for the Kinsley Landfill. And these affidavits indicated to the court that a temporary lift to the landfill is possible. Mr. Burshtin, although not familiar with the specifics of the lift, attested and so testified that this lift is a possibility in order to temporarily extend the life of the landfill. I further find that Gloucester County Board of Freeholders denied an application for the lateral extension of the Kinsley Landfill to adjoin virgin ground that the various plaintiff municipalities are currently required to dispose of their solid waste at the Kinsley Landfill pursuant to the county plan and the DEP regulations. In addition, the

City of Philadelphia, numerous Camden County municipalities, Salem County, the Camden County Municipal Utilities Authority, are currently directed by the DEP, that is, the Department of Environmental Protection to dispose of their solid waste in Kinsley.

There is testimony before this court, and I so find, that the county is currently negotiating for an alternate site, a place called Colinville-Brookdale in Pennsylvania and I so find that it was approximately 75 miles from Gloucester County. I further find the verified allegation of the plaintiff municipalities state their existing budgets, equipment and manpower at this time are not capable of effectively disposing waste to these suggested alternate sites. I heard Mr. Perna. I was impressed with his testimony. He testified under oath on the stand that without the sludge out of Camden's MUA or Municipal Utilities Authority being dumped, it would have to be stored; that there was great danger that the Delaware River, the Delaware River that flows approximately two miles from this courthouse would be polluted. I heard testimony that trash would accumulate throughout this county. This concerns me. I heard and saw evidence in part of the record of municipalities in this county, municipalities such as Glassboro, Woodbury, National Park, Pitman, to name a few, that interjected, and even Deptford, hundreds of thousands of dollars would be effectively spent to go to alternate sites.

This has created in this court's mind, if I could simply state it and it is not simple, a doomsday of trash disposal being placed upon us today, an environmental and economical nightmare; and that's the best way to describe it. I also find that the Kinsley Landfill located in Deptford Township, its size, safety and environmental impact is of great concern to the residents of Deptford Township. I heard a housewife on the stand today testify very vividly how here eyes burn; she follows trash trucks, trash falls on the streets. I heard numbers of trucks being trucked into the Kinsley Landfill. All of this I heard —

that concerns me — of course, testimony in evidence is presented to the court concerning much more than that which I related today. But for the purpose of this hearing, the issue presented before this court today is of sufficient basis upon which I can make a determination as to the issuance of injunctive relief.

This court, although sitting in law today and hearing this matter by virtue of Prerogative Writ, there is a merger of law and equity and there is an equitable maxim that this court has employed, many, many times when I sat in the Chancery Division in this particular county and, that is, that equity never suffers a wrong without a remedy and this court today aims to mold such a remedy. I've got to. Someone has to do it today. There's a paralysis in this county that must be broken. It is beyond question that the imminent closing of the Kinsley Landfill will work an immediate and irreparable harm on the plaintiffs, trash haulers and the citizens relying on their service; budgets may be broken, necessary services will be severely impaired, utter chaos in the waste management of this county; waste may accumulate uncollected and cause a severe environmental hazard; businessmen and citizens will suffer. On the other hand Kinsley itself is of environmental concern. I can't ignore it. It's there. It won't go away. It's of concern to the citizens who live and work in Deptford Township. If it is to continue operation beyond its permitted design and capacity, the citizens of Deptford will be seriously and deleteriously affected since vertical or lateral extensions or lifts have not been approved and safety requirements have not been adequately assured by the required state agency.

The court is satisfied today in a temporary nature that the plaintiffs have properly invoked its equitable jurisdiction, there being no adequate remedy at law; the reasonable likelihood that the plaintiffs are entitled to relief has been met by them for the purpose of this hearing. The court recognizes that if Kinsley were permitted to

close this Sunday there would be in actuality no county plan for solid waste disposal in this district. All the possible alternatives, which may be suggested or modifications of the County Solid Waste Plan and under the Act would be required to undergo certain procedures before their acceptance and subsequent submission for approval by the DEP. This court is not going to wait until the 11th hour. The imminent crisis is upon us today and before this Court and it appears to be taking place in many districts all through this state due to the all-decreasing landfill areas and the ever-increasing public concerns of the environment.

This court notes that just recently in the matter of *Filcrest Realty Corporation vs. New Jersey Department of Environmental Protection vs. Industrial Land Reclaiming Company, Incorporated and County of Middlesex vs. State of New Jersey Department of Environmental Protection,* I/M/O Petition of Edgeboro Disposal, that this matter was before the Appellate Division of New Jersey, heard by the Panel of Judges McElroy, Drier and Judge Shebell. This was the Appellate Court of the Superior Court. And this particular case, although it is not published, it was brought to my attention and I did secure a copy and it does give this court guidance. In that particular case, and I want the record to be clear that I have reviewed a transcript of the trial judge's decision, the trial judge in that particular case immediately closed the landfill. Our Appellate Division stated in effect, Judge Shebell's order of October the 5th, 1984 and I read the important portions because, although this is not a published opinion, it does give me guidance, gives me guidance to know what a section of our Appellate Court does, which is a court in which appeals from this court, this court sitting in a trial court has taken. Judge Shebell stated, we grant a stay of trial judge's order of October 4 requiring immediate closing of the ILR Landfill. We deem it is within the jurisdiction of the Chancery Court

to provide for an orderly closure of the ILR Landfill giving consideration to its effect on all parties and the public. We remand to the trial judge to hold a hearing forthwith to establish a timetable under which a gradual phase-out of solid waste from ILR to the Edgeboro Landfill can be accomplished. All proceedings in regard to this appeal are stayed; and this order shall have no right or effect upon Edgeboro to pursue its right to a hearing before any State agency concerning the redirection orders.

This court is inclined to effectuate the closure of the Kinsley Landfill. But in considering the equities involved, the balancing of the hardships and most importantly considering the public interest, this court will intervene in the closure of the Kinsley Landfill, but it will intervene so that this closure is orderly.

I will grant today a preliminary restraining order barring any action by the defendants to close Kinsley Landfill. I issue this injunction within the rules as I understand them. This court has the authority to issue a temporary restraining order 20 days from the time I make my decision. I issue it for a period of 18 days. In the interim, this court orders that the Gloucester County Board of Chosen Freeholders and its Solid Waste Advisory Committee to formulate a reasonable alternative site to Kinsley and a modification of its Solid Waste Management Plan and to take all steps necessary to effectuate its formal approval by the Board and to submit the same to this court. Furthermore, I order that the Department of Environmental Protection to provide to this court a timetable for the orderly closure of the Kinsley Landfill and to take steps under their law and under their body of administrative regulations to direct the trash in an orderly fashion. Lastly, I order that Kinsley partake in this remedy, which I have molded and I want them to provide to me engineering plans for a temporary vertical expansion of the portion of the landfill not in use, not any virgin ground, no expansion. I want to know what Mr. Burshtin — and everyone was in court and heard his testimony —

is it safe to go up a little bit? Said plan is to be delivered to the DEP care of Mr. Burshtin, who tesitified right in this court that he could review the proposed temporary lift in a matter of three or four days. Upon completion of the review of Mr. Burshtin of the DEP or those qualified in that department, said proposal shall be submitted to this court.

It is further ordered that upon good cause shown, this order which is a temporary order, may be modified, enlarged or dissolved on a one-day notice. Now, I am intervening again. I am relaxing the court rules. The court rules provide for a two-day notice on a modification. Because of the urgency of this matter, because it concerns this court, I, who have the power to do it under the court rules are relaxing. I will hear this matter day or night on a one-day notice, personally, and I have so ordered. Because of my orders, certain parties have to do certain things. It is unnecessary at this particular time, because again, I rely on Mr. Burshtin's testimony who I heard under oath, to restrain the City of Philadelphia and Camden from disposing waste at the Kinsley Landfill. However, so that everyone knows where I am coming, I reserve that decision, that decision with regard to Philadelphia, Camden for another day and pending further hearing.

In order to effectuate this very emergent situation and to put this matter into effect, because doomsday is upon us, 9:00 a.m. November 13, 1984 I will clear my calendar at 9 o'clock and I will meet all the attorneys in this courtroom to hear further arguments in regard to whether my restraints should be dissolved, continued, extended or modified and that is the date which I want all people to come back, 9 o'clock in this courtroom or you can check with Mrs. Dodson, my secretary and she will tell you where I will be sitting. In addition thereto, and this is very important so that this court is not caught and so that I can be prepared and not caught at the last minute, because as you are aware I have had to study a

voluminous amount of evidence and excellent briefs in regard to this matter in a short period of time, I order that all of these reports that I am calling for, the engineering report, the DEP report, the Solid Waste Management Gloucester County Report be submitted to my chambers by 4 o'clock Friday, November 9, 1984.

Now ladies and gentlemen, this has been a most difficult case. This court now I feel has done its job today. Now I direct the county, DEP and Kinsley Landfill to do theirs. And I find and determine that all the parties before this court are reasonable people. This country was founded upon laws promulgated by the people and our people live by law and order. And if everyone does their job we are all going to solve this crisis so that we won't have to be back before a court such as myself asking to intervene.

Thank you for your courtesies. That is the order of the court today. Mr. Lisa, you will prepare the order under the five-day rule.

(Whereupon the hearing was concluded.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
GLOUCESTER COUNTY
DOCKET NO. L-070476-84 PW

BOROUGH OF GLASSBORO, a municipal corporation of the State of New Jersey

Plaintiff

v.

GLOUCESTER COUNTY BOARD OF CHOSEN FREEHOLDERS, et al

CIVIL ACTION

TEMPORARY RESTRAINING ORDER

This matter having been opened to the Court by Joseph F. Lisa, Esq., attorney for Plaintiff Borough of Glassboro, and in the presence of counsel for the various parties to this cause as indicated on the list and annexed hereto, and this matter having been heard by the Honorable Samuel G. DeSimone on October 19, 23, 24, 25 and 26, 1984 and the Court having heard the testimony of the various witnesses, having reviewed the various exhibits, affidavits and briefs submitted by counsel and having heard the arguments of counsel, and it appearing to the Court that there is an immediate threat of irreparable injury if temporary restraints are not granted, and for the reasons set forth by the Court in its oral Opinion on October 26, 1984, and for good cause shown:

It is on this 26th day of October, 1984, ORDERED that defendants are restrained from taking any action which would prevent the continued uninterrupted use of Kinsley Landfill until and including November 13, 1984;

And it is further ORDERED that not later than November 9, 1984, the County of Gloucester shall formulate a reasonable alternate site for solid waste disposal and to modify its Solid Waste Management Plan accordingly, and take all steps necessary to effectuate same,

and shall submit a written report to the Court by 4:00 P.M. on November 9, 1984;

And it is further ORDERED that not later than November 9, 1984, the DEP shall submit a timetable for the orderly closure of the Kinsley Landfill and take steps to redirect waste flow in an orderly fashion and submit a report to the Court by 4:00 P.M. on November 9, 1984;

And it is further ORDERED that not later than November 5, 1984, Defendant Kinsley Landfill, Inc. shall submit to Walter Burshtin of the DEP and to the Court, a complete engineering design for the vertical expansion of the Kinsley Landfill for one additional lift of compacted solid waste;

And it is further ORDERED that not later than November 9, 1984, the DEP shall review the Engineering design and submit a written report to the Court by 4:00 P.M. on that date;

And it is further ORDERED that all reports and submissions required by this Order shall be made available to all counsel on November 9, 1984 by 4:00 P.M. at the Gloucester County Court House;

It is further ORDERED that the Court shall reserve decision on the application for restraints against the County of Camden and the City of Philadelphia;

And it is further ORDERED that all counsel shall appear before the Court on November 13, 1984 at 9:00 A.M. for argument regarding the continuation, dissolution or modification of this Order and the restraints contained therein;

And it is further ORDERED that any provision of this Order may be modified or dissolved by application of any party on one-day notice to all other parties.

SAMUEL G. DE SIMONE, A.J.S.C.